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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0042

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local security office of the Department of Energy (DOE) determined that reliable information it had received raised substantial doubt concerning the individual's eligibility for access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. For the reasons stated below, I find that the individual's access authorization should be restored.

I. BACKGROUND

The individual works for a contractor at a DOE facility where some assignments require an access authorization. Beginning in 1997, when he was 18 years old, the individual was a summer intern at the facility for a number of years, attending college during the academic year. The present proceeding arose when the individual's employer requested a higher level of access authorization for the individual. The personnel security branch responsible for the DOE facility where the individual works (local security office) ordered an investigation of the individual in connection with that request. In the course of the investigation, a source revealed that the individual had smoked marijuana during college. The local security office presented the individual with a Letter of Interrogatory, which contained questions to which the individual provided written responses. With respect to his use of marijuana, the individual stated that he had not used marijuana since high school. The local security office then conducted an oral interview with the individual. At first, the individual denied using marijuana since high school, but later in the same interview, he admitted that he had smoked marijuana more than once in college. The individual's use of marijuana and his lack of honesty in concealing that use caused the local security office to question whether the individual's holding an access authorization posed a threat to the national security.

On the basis of that information, the local security office issued the individual a Notification Letter, in which it stated that the DOE has substantial doubt about the individual's eligibility for access authorization, based on disqualifying criteria set forth in section 710.8, paragraphs (f), (k) and (l). In the Notification Letter, the local security office stated that the individual had completed a Questionnaire for National Security Positions (QNSP) in November 2000. Question 24a of that form asked, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana . . . ?" The local security office alleges that the individual intentionally responded in the negative, though he had in fact used marijuana during the 2000-2001 academic year while at college, after holding access authorization during his summer internship. The local security office also asked the individual questions about his marijuana use in a Letter of Interrogatory that the individual completed in February 2002, and alleges that the individual falsified his responses when he wrote that his last use of marijuana took place when he was 15 years old and in high school, and omitted significant information when he failed to state that he had used marijuana in college. The local security office maintains that such withholding or falsifying of information raises a security concern under 10 C.F.R. § 710.8(f) (Criterion F). The Notification Letter also refers to an interview conducted by a personnel security specialist of the local security office in August 2002 (Personnel Security Interview, or PSI), in which the individual admitted that he had used marijuana at least 12 times during the 2000-2001 academic year. The local security office maintains that such use of illegal drugs raises a security concern under 10 C.F.R. § 710.8(k) (Criterion K). Finally, the Notification Letter sets forth certain actions of the individual that the local security office contends raise additional security concerns: intentionally stating falsehoods when, early in the PSI, he maintained that he had only used marijuana once; knowingly associating with people who used illegal drugs; using marijuana at least 12 times after signing a Security Acknowledgment that informed him that he could lose his access authorization for involvement with illegal drugs; and using marijuana despite his acknowledgment that it "alters your mind and perception and impairs your ability to function normally." The local security office maintains that such actions raise security concerns under 10 C.F.R. § 710.8(l) (Criterion L).

The Notification Letter also informed the individual of his procedural rights, including his right to a hearing. The individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as hearing officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called as its only witness the personnel security specialist who conducted the PSI. The individual, who represented himself, called as witnesses his supervisor, his mother, and three co-workers and friends, and testified on his own behalf. The DOE submitted seven written exhibits, including one submitted at the hearing. The record of this proceeding was closed when I received a copy of the transcript of the hearing (Tr.). */

II. STANDARD OF REVIEW

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The

* At the end of the hearing, the local security office asked for 30 days in which to submit into the record evidence that the individual had received documents upon leaving his summer internships each year concerning his security responsibilities. The office has not submitted any such evidence.

applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of the individual’s participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is raised as to the individual’s eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d); *see, e.g., Personnel Security Hearing* (Case No. TSO-0009), 28 DOE ¶ 80,941 (October 21, 2003), and cases cited therein. In the present case, reliable information has raised such a question. Nevertheless, the individual has demonstrated that restoring his security clearance will not endanger the common defense and will clearly be in the national interest.

III. FINDINGS OF FACT

In February 1997 the individual completed a number of forms for the local security office. Among the documents he signed was one, entitled “Security Acknowledgment,” that contained the following language: “I understand that my use of alcohol to excess, and/or my involvement with any illegal drug, could result in the loss of my DOE access authorization.” Exhibit 7. Beginning in 1997, the individual was a student intern during his summers at the DOE facility, holding an “L” access authorization.

At some point in 2000 his employer requested a higher level (“Q”) access authorization for the individual. In November 2000 his mother, an administrative assistant at the DOE facility who had prepared QNSPs for other employees, prepared one for his signature. In response to Question 24a, which asked, among other things, whether the individual had used marijuana since age 16, she checked the “No” box. Exhibit 6 at 13. According to the testimony of both the individual and his mother, he signed the QNSP quickly, without reviewing it thoroughly, while he was home from college on Thanksgiving break. Tr. at 122 (testimony of mother), 129 (individual’s testimony).

In December 2001, the Office of Personnel Management (OPM) completed its investigation of the individual associated with the request for his “Q” access authorization. It reported to the local security office, among other things, that one source it consulted stated that the individual had used marijuana at

college during the 2000-2001 academic year. Exhibit 6 at 21. The local security office then asked the individual to complete a Letter of Interrogatory concerning his illegal drug use. In response to a request for his first and last dates of marijuana use, he stated that he used marijuana in high school, when he was 15 years old, and had not used any illegal drugs since then. Exhibit 2.

In August 2002 the local security office conducted a PSI with the individual. Early in the PSI the individual was questioned about his history of marijuana use. He responded in a manner consistent with the responses he gave on his Letter of Interrogatory: that he had experimented with marijuana when he was 15, but had not used any while at college. Exhibit 4 (PSI Tr.) at 23-25, 33-34. Later, however, after the personnel security specialist reassured the individual that “[w]ithholding information is worse than the act,” and that misunderstandings are taken into consideration, the individual admitted his marijuana use in college and stated that he had used it at parties during his senior year of college (2000-2001) no more than 12 times. *Id.* at 39-40, 48.

At the hearing, the individual’s friends and coworkers spoke highly of the individual. They stated that he was regarded as honest, straightforward, and cautious. Tr. at 57-58, 63-64, 85. The individual’s mother testified to his maturity and to the importance of his current position to him. Tr. at 119-126. The individual also spoke of his marijuana use as something from the past. Although that usage was ongoing no more than three years ago, there is a substantial amount of evidence that he has matured a great deal since that time. Tr. at 159-160. Moreover, there is no evidence that contradicts the individual’s assertion that he has not used marijuana since college. To the contrary, one of his coworkers, with whom he has socialized regularly during the two-and-a-half years since his completion of college, testified that she has never known him to use drugs or associate with others who use drugs, and that she has seen him physically remove himself from situations where drugs were present or might become an issue. Tr. at 85-86.

At the hearing, the individual offered his explanation for why his QNSP did not reflect the truth about his marijuana use in college, and why he did not correct the information immediately. As discussed above, there is evidence that he did not review the QNSP carefully when he signed it. He contends that when he received the Letter of Interrogatory, he realized that he had responded incorrectly on his QNSP and he panicked. Tr. at 129. He shared that panic at the time with one of his college friends, who testified at the hearing. Tr. at 59. He readily admits his decision was a bad one, Tr. at 129, but he decided that it was important to be consistent in his response to the local security office, so he stated on his response to the Letter of Interrogatory that his first and last use of marijuana was when he was 15 and in high school. *Id.* See Exhibit 2. He then stated,

Going into the PSI, at the beginning I lied. The reason for that, and this is the motivating factor, is to remain consistent with what I said in the letter of interrogatory. . . . I asked about consistencies from [the interviewer]. At this point I began questioning my motive of consistency. In other words, I realized— I think I realized I was making things worse and I started asking for information. . . . [The interviewer told] me basically that withholding information is worse than the act. . . . So then . . . I take responsibility for it, and I fully disclose at that point that, yes, I have done marijuana in college. That was

my line of thinking. I was— before I was just trying to remain consistent with what I had said before. At this point I diverged from that because I realized I was making things worse. Yes, I was emotional. If you look at [the transcript] on Page 41, I was really— talking really fast, and I mean, this had been something that had been weighing me down and I wanted it off my chest. So, I mean, I don't have a hardened [conscience]. This had bothered me, and I had been taking second guesses at it. ”

Tr. at 129-30. This account of his revelation of the truth is corroborated in the testimony of the personnel security specialist who conducted the PSI, who also stated that he sensed the individual's relief at “get[ting] it out in the open.” See Tr. at 27.

The individual also set forth at the hearing his assertion that he was not aware that his access authorization was in effect while he was studying at college during the academic year. This assertion relates to one of the charges made against him under Criterion L, that he used marijuana after signing a security acknowledgment in 1997 that informed him that he could lose his access authorization for involvement with drugs. Based on the questions posed to the individual during the PSI, it is clear that the individual did not believe he continued to hold access authorization after he turned in his badge at the end of each summer's employment with the contractor. PSI Tr. at 34; Tr. at 19-22 (testimony of personnel security specialist). As a result, he was not aware that he was bound by the terms of his access authorization to refrain from illegal drugs during the academic year, when he was not working for the contractor. PSI Tr. at 35. The interviewer explained to him during the PSI that as a student intern his access authorization had in fact remained in effect throughout the academic year, and the interview continued:

Q: Do you understand that?

A: I do.

Q: Now, did you understand it then?

A: No, obviously not.

Q: Okay. You didn't have your security briefing when you got your “L” clearance?

A: They never brought that up. They didn't, they didn't go through the detail you're going through it with me right now, let's put it that way. . . . [H]ad I been sat down and [told that] any association with these people . . . is a violation of you having your clearance and that was like straight face-to-face said to me like that I would have taken pause before I did that stuff. So I don't, I, in retrospect I didn't understand at the time.

Id. at 35-36. At the hearing the individual reiterated his position:

[T]here is a question that has come up, did I have a clearance or not when I turned in

my badge. To my knowledge, I did not. I turned my badge in to whoever took my badge, it was different every single time. To the best of my knowledge, my severance packages, the only thing I was doing was shutting down my phone, shutting down my passwords, in other words, breaking off the stuff that I do at the corporate level, but nothing with the Department of Energy.

Tr. at 128. The local security office requested the opportunity to produce documentation after the hearing that would establish that the individual had been notified at the end of each of his summer internships that his access authorization was still in effect, and with it its obligations. Tr. at 50. As noted above, no such documentation has been received in the record.

IV. ANALYSIS

False statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995) (affirmed, OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000). Willful use of an illegal drug similarly raises serious doubts about an individual's eligibility for access authorization: an individual who is willing to disregard a law that forbids such action may also be willing to disregard laws that protect classified information from disclosure. Finally, certain behaviors the individual engaged in—intentionally stating falsehoods, knowingly associating with people who used illegal drugs, using marijuana at least 12 times after signing a Security Acknowledgment that informed him that he could lose his access authorization for involvement with illegal drugs, and using marijuana despite acknowledging its capacity to impair—raise additional doubts about the individual's honesty, reliability and trustworthiness. Based on the record before me, I find that the DOE correctly invoked Criteria F, K, and L when it suspended the individual's security clearance.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing* (Case No. VSO-0244), 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); I (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review* (Case No. VSA-0154), 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). Cases involving verified falsifications are nonetheless difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, hearing officers must look at the statements of an individual, the facts surrounding the falsification and the individual's subsequent history in order to assess whether the individual has rehabilitated himself from the falsehood and whether restoring the security clearance would pose a threat to national security. *See Personnel Security Hearing* (Case No. VSO-0327), 27 DOE ¶ 82,844 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,005 (2000) (affirmed by OSA, 2000); *Personnel Security Hearing* (Case No. VSO-0418), 28 DOE ¶ 82,795 at 85,705 (2001). In the end, like all Hearing Officers, I must exercise my common

sense judgment whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c).

Criterion F: Falsification, Misrepresentation, and Omission

Criterion F describes a concern raised when a person has “[d]eliberately misrepresented, falsified, or omitted significant information from . . . a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . .” 10 C.F.R. § 710.8(f). The DOE security program typically explains its concern about this kind of behavior in terms of trust. A person who makes false or misleading statements is not acting in a forthright and honest manner, and cannot be trusted to protect classified information and special nuclear material. *Personnel Security Hearing* (Case No. TSO-0044), 28 DOE ¶ 82,936 (October 9, 2003). In this case, however, the DOE relies heavily on its concern that the individual's falsification left him vulnerable to blackmail or extortion. Tr. at 24 (testimony of personnel security specialist); PSI Tr. at 58-61. This concern is more properly a concern related to Criterion L and I will address it in that section.

The local security office has demonstrated that the individual falsified information about his marijuana use on three occasions. He signed a QNSP in 2000 that contained a negative response to a question concerning his use of illegal drugs since age 16; he failed to inform the local security office of his use of marijuana during the school year 2000-2001 in response to a Letter of Interrogatory in 2002; and he failed to inform the local security office of that use under questioning at the beginning of a 2002 PSI.

At the hearing, the individual contended that his error in reporting on the QNSP was inadvertent, because he had not reviewed all the content of that form carefully. He also contended that once he realized that he had made a error, he felt obliged to present a consistent position to DOE. He maintained that his primary motive for covering up his drug use in college was that he did not fully understand the importance of being completely forthright, though he admitted that fear of losing his job was also a factor. Tr. at 156. Once the PSI interviewer explained the importance of full disclosure in terms of susceptibility to blackmail, the individual came forward and spoke truthfully. He has stated that he accepted full responsibility for his actions, and attributed them to poor judgment.

With respect to the individual's contention that he did not inadvertently falsify his response on the QNSP, I can accept his assertion that he did not review the form carefully enough before signing it in November 2000. The individual contends that he did not discover the error on the QNSP until he was asked to complete the Letter of Interrogatory in 2002, and the record contains no evidence that he was aware of the error before that time. Nevertheless, because he signed the QNSP, I hold him responsible for the content of the QNSP, and find that he withheld information from the local security office from November 2000 to August 2002, a period of 21 months. Even if I were to accept that he was unaware of the falsification in November 2000, I would still find that he withheld information from the local security office for at least seven months, starting from a time in early 2002, when the individual discovered the error on the QNSP, until his PSI in August 2002.

What I must consider in this case is whether the individual has presented sufficient evidence of mitigation, that is, evidence that the risk that he will falsify or withhold significant information from the local security office in the future is so minimal that it is an acceptable risk to the national security. The individual bears the burden on convincing me that this behavior will not recur and that he no longer represents a significant security risk.

The regulations governing this proceeding instruct me to consider, among other matters, the voluntary nature and the frequency and recency of the falsification. *See* 10 C.F.R. § 710.7(c). The individual's falsifications were clearly voluntary, though the initial one may possibly have been unintentional. His insistence on consistency was similarly of his own choosing. In considering the voluntariness of his revelation of marijuana use in college, I note that he made the admission before the PSI interviewer confronted the individual with external evidence of such use. Such self-disclosure has generally been considered a mitigating factor in other hearing officer's decisions reviewing Criterion F concerns. *See Personnel Security Hearing* (Case No. VFA-0440), 28 DOE ¶ 82,807 at 85,759 (July 9, 2001), and cases cited therein. On the other hand, the individual did not volunteer the information until he understood that his insistence on maintaining the misrepresentation was doing himself a disservice. PSI Tr. at 38-40. With respect to the frequency and recency of the falsifications, the individual made affirmative falsifications twice, in February and August of 2002, and an imputed falsification in November 2000. These misrepresentations occurred over a period of nearly two years. Balanced against that is evidence of the individual's demonstrated willingness to be honest and straightforward with the local security office since his last falsification in August 2002, about one-and-a half years ago. In other cases involving falsification, hearing officers have considered both the length of time the misrepresentations were maintained and the length of time of demonstrated honesty in deciding whether to find adequate evidence of reformation. *See Personnel Security Hearing* (Case No. VFA-0440), 28 DOE ¶ 82,807 at 85,760 (July 9, 2001), and cases cited therein. As the hearing officer determined in that case, which involved 18 months of responsible, honest behavior following a six-month span of dishonesty, I find that the individual's positive attitude toward security, his remorse for his actions, and his current credibility weigh in favor of finding reformation.

Other factors that I am to consider in my decision-making process include the age and maturity of the individual when the falsifications occurred, the motivation for the conduct, the potential for pressure or exploitation, and the likelihood of recurrence. 10 C.F.R. § 710.7(c). The individual was 21 years old and still in college when he signed the QNSP, and 23 when he provided responses to the Letter of Interrogatory and attended the PSI. He is 25 now. It is clear from his testimony that a concern for consistency was a driving force in his decision to falsify. He now acknowledges his poor judgment in falsifying his responses to inquiries about his prior marijuana use. Tr. at 131. I attribute his poor judgment in this context to a youthful, unsubstantiated fear that he would not be permitted to explain his behavior fully to the local security office. *See* PSI Tr. at 98 ("I was scared the interview . . . would just be over, you know, like that's it, that's all we need to know now, bye."). Regarding the potential for pressure or exploitation, there is no evidence, fortunately, of any attempt to blackmail or exploit the individual during that period when he was misrepresenting his marijuana use. The personnel security specialist testified that now that the individual's marijuana use is out in the open, his vulnerability to blackmail and other forms of pressure is reduced. Tr. at 25, 30. My opinion is that the individual's

vulnerability to blackmail regarding his marijuana use in 2000-2001 has in fact been reduced to zero. Moreover, I am convinced that the individual has improved his judgment significantly in a relatively short period of time, something not entirely unusual for a person so young. He states, and his mother has testified in agreement, that he had matured as a consequence of this administrative process. Tr. at 125-26; 159-60. There is no doubt in my mind that he is a changed person. I believe that, in light of the maturity he has gained and the lessons he has learned in this process, he will rely on truth and trust, rather than foolish consistency, to rule his actions in the future. I have determined that the individual's maturity and improved judgment mitigate the risk to the national security of his prior breach of trust.

Criterion K: Marijuana Use

Criterion K describes a security concern raised when a person has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other [controlled substance] except as prescribed or administered by a physician . . . or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k). The security concern surrounding use of illegal drugs is that such use is a violation of law, and a person who picks and chooses which law to obey, rather than abiding by them all, might be similarly lax in observing the laws and regulations that protect the disclosure of classified information. In this case, the local security office's concern was triggered by the individual's admission during the PSI that he had used marijuana in social situations on the average of once a month during his senior year of college, in the 2000-2001 academic year. The DOE does not contend, nor is there any evidence, that he continues to use marijuana or any other illegal drug, nor that he has used any since the dates he revealed during his PSI. To the contrary, testimony of his friend and co-worker supports his contention that he has not. Tr. at 86. Therefore, I find that the individual's marijuana use was confined to a fixed period in the past. The individual has convinced me that he has matured in the nearly three years that have transpired since that stage in his young life when he used marijuana. His testimony and that of his witnesses support his conviction that illegal drug use is no longer a part of his current life. For example, his friends testified that he no longer uses marijuana or associates with people who use marijuana. Tr. at 56, 64-65. Because there is no indication in the record that the individual's illegal use of drugs ever extended beyond marijuana nor beyond his senior year of college, and because I believe he will not resume using drugs, I have determined that the evidence in this case mitigates the DOE's security concern that his former marijuana use has raised.

Criterion L: Unusual Conduct

Criterion L describes a security concern that is raised when a person has

[e]ngaged in any unusual conduct . . . which tend[s] to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.

10 C.F.R. § 710.8(l). The local security office's concerns under Criterion L relate to the same events

that underlie its Criteria F and K concerns: using marijuana during the academic year 2000-2001 and misrepresenting his drug use to that office.

The specific Criterion L concerns arising from the individual's marijuana use in 2000-2001 are that he knowingly associated with people who use illegal drugs while he was holding access authorization, that he used marijuana while holding access authorization even though he acknowledged during the PSI that marijuana alters one's mind and impairs function, and that he used marijuana after signing a statement in 1997 that informed him that he could lose his access authorization for using illegal drugs. With respect to his using marijuana and associating with other users while he was holding a clearance, the evidence in the record, as discussed above, indicates that the individual understood, however incorrectly, that he was not holding access authorization during the academic year. The local security office has not come forward with any evidence to support its contention that the individual was aware of his security responsibilities during the academic year. I cannot attribute to the individual the knowledge of these responsibilities that would raise these concerns. *See Personnel Security Hearing* (Case No. VSO-0307), 27 DOE ¶ 82,837 (March 9, 2000). On the other hand, using illegal drugs is a legitimate security concern because it indicates that the user may be willing to pick and choose which laws he wished to obey and which he does not. PSI Tr. at 67. Such a person might also choose to ignore the laws and regulations that protect classified information. In this case the individual contends that he does not recall the content of the Security Acknowledgment that he signed in 1997, which included language informing him that involvement with illegal drugs could result in loss of access authorization. PSI Tr. at 65; Tr. at 155. At the PSI, he did acknowledge, however, that marijuana use is illegal. PSI Tr. at 66. Nevertheless, because I have concluded that the individual has not used marijuana in nearly three years and in my opinion is no longer likely to use it or any other illegal drugs, he has mitigated that concern.

I also find that the Criterion L concern based on the individual's falsifications has been mitigated. As the personnel security specialist summarized it, the DOE's concern focuses on the "length that [the individual] went to avoid the issue of admitting drug use." Tr. at 25. The individual asserts that he did not realize that the DOE's security concern was his potential vulnerability to blackmail until it was explained to him at the PSI. PSI Tr. at 59-61; Tr. at 131. Once he understood, during the PSI, how he had subjected himself to vulnerability to pressure by lying, he eliminated that risk immediately. As discussed above, in the section concerning Criterion F, the record shows he was not pressured during the period in which he maintained his misrepresentations, and I have determined that his vulnerability became insignificant once he admitted to the full extent of his marijuana use.

A more important potential concern is that, given his past deceptive actions, the individual might engage in similar behavior in the future, opening himself once again to susceptibility to pressure or exploitation. The evidence in the record strongly suggests the contrary. The individual testified that maintaining the deception had affected him deeply, and the personnel security specialist who conducted the PSI testified that he observed a sense of relief in the individual once he had come forward with the truth. Tr. at 27. His mother, friends and co-workers, all of whom were aware of the falsifications he made to the local security office, nevertheless testified that he is by nature honest, trustworthy and reliable, and that these embroilments are distinctly out of character for him. Tr. at 54, 57, 58, 63, 85, 87, 88, 124. In light of that testimony as well as my observations of the individual's character and demeanor at the

hearing and during the preparatory stages of this proceeding, I find it extremely unlikely that the individual will ever place himself in such a position of vulnerability again. Consequently, I find that the individual has mitigated that concern under Criterion L.

V. CONCLUSION

At the end of the hearing, the individual summarized the distinctions between the person he was almost three years ago, when he was in college, and who he is today. He pointed out that he no longer associates with people who use illegal drugs. His friends do not, either, and they support each other in avoiding situations in which such substances might be used. He continued,

Secondly, I'm taking life a lot more seriously now. . . . I got to graduate school, very different game, very different group of people. You have to be very ambitious, very dedicated, and you cannot mess around. If you lose focus for a second, you fall behind. At that point, you know, [marijuana] was over with. Like, that was a phase in my life. . . . I'm accountable to a lot of people [for not using marijuana]. . . . they know my intentions. And if I break my accountability with them, then I'm breaking my own integrity, and telling all the witnesses that came in here today, I'm telling them to their face, you know, what you told those these people in the hearing meant nothing to me. And that couldn't be further from the truth. So, yes, I'm accountable to my family, my friends, and the people that I work with. And, finally, what I want out of life, the picture that I have is a career, a house, a car, you know, the dog, and . . . [i]f I'm blessed at some point I'll have kids. . . . Drugs don't fit that picture at all. And especially, especially in my situation now, knowing, you know, just even being in the presence of it can be dangerous to my position, brings up blackmail issues. You know, I'm a lot more cautious now that I know.

Tr. 159-60.

Deciding whether to restore this individual's clearance is a close call. He used marijuana with some frequency, and not all that long ago. More important, he hid his use of illegal drugs from the local security office, and in doing so, he falsified documents and made false statements, placing in jeopardy the process on which the local security office depends for making accurate assessments of an individual's eligibility for access authorization. Youthful indiscretion mitigates, to some degree, the security concerns that this individual's actions and errors in judgment raise. But in fact, the individual is still quite young, and his youth cannot serve as an excuse for all of his conduct. In his favor, nearly three years have passed since the individual last used marijuana, and to his credit he has acknowledged his poor judgment and accepted full responsibility for it. When he realized that his insistence on consistency was inappropriate and a poor substitute for the truth, he came forward with a truthful accounting of his marijuana use. The evidence shows that he experienced great relief once he allowed himself to be straightforward with the local security office. There is every indication that his drug involvement was confined to social use during a fixed period in the past, and that his falsifications were limited in scope and contrary to his general nature. He has gained a great deal of maturity in the past

three years, in part through the seriousness of beginning his career, and in part through enduring this administrative review process itself. I am convinced that he is no longer the student who will use marijuana socially, nor the young person who misjudges the need to be absolutely straightforward with the local security office. On the basis of the evidence before me and the individual's demeanor that I have observed during this hearing process, I believe there is little risk that the individual will repeat his acknowledged errors in judgment. For the reasons set forth above, I conclude that the individual has presented evidence that warrants restoring his access authorization. He has demonstrated that restoring his access authorization will not endanger the common defense and will be clearly consistent with the national interest. Therefore, the individual's access authorization should be restored.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: April 1, 2004